

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KATHARINE ANN FREDRIKSEN

Plaintiff,

v.

CONSOL ENERGY INC.

Defendant.

Civil Action No. 2:18-CV-00379

Honorable Marilyn J. Horan
United States District Judge

**DEFENDANT CONSOL ENERGY INC.'S MOTION
FOR LEAVE TO FILE REPLY IN SUPPORT OF ITS MOTION TO STRIKE THE
"SUPPLEMENTAL" EXPERT REPORT OF JOHN PETRANCOSTA**

Defendant CONSOL Energy Inc. ("CONSOL"), pursuant to Chambers' Procedures, hereby moves the Court for leave to file a reply to Plaintiff's Brief in Opposition (ECF No. 70) to CONSOL's Motion to Strike Plaintiff's "Supplemental" Expert Report of John Petrancosta and Preclude the Introduction of Damages Calculations Not Disclosed During Discovery ("Motion to Strike") (ECF Nos. 64-65) and states:

1. On July 18, 2019, CONSOL filed its Motion to Strike in which it argued that while Plaintiff's "Supplemental" Expert Report was styled as a "supplemental analysis," the report actually replaced Mr. Petrancosta's prior damages calculations with entirely new damages calculations that had not been previously disclosed to CONSOL, despite the Court's November 19, 2018 Order requiring Plaintiff to supplement her damages calculations or risk being precluded from presenting evidence of such calculations at trial.

2. On July 25, 2019, Plaintiff filed a Brief in Opposition (the "Opposition") to CONSOL's Motion to Strike in which she offered purported justifications for her untimely expert

report and noted that one of the decisions CONSOL relied upon – *Howe v. City of Akron* – has been reversed.

3. CONSOL seeks leave to file a reply, which is attached hereto as Exhibit 1, for the limited purpose of addressing arguments raised in Plaintiff's Opposition, and to explain that the citation to the *Howe* decision, later reversed by the Sixth Circuit, was due to the case being incorrectly marked as having no negative subsequent appellate history within LexisAdvance.

4. CONSOL has filed this Motion and its proposed reply in an expedited fashion and well in advance of the hearing on Plaintiff's Motion to Strike, which is set for August 8, 2019; therefore, CONSOL submits that no significant delay will be caused by permitting it to file a Reply.

CONCLUSION

WHEREFORE, CONSOL respectfully requests that the Court issue an Order granting CONSOL leave to file a brief reply to Plaintiff's Brief in Opposition to CONSOL's Motion to Strike and grant such other and further relief as this Court deems just and proper.

DATED: July 30, 2019

Respectfully submitted,

/s/ Gerald J. Stubenhofer

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following counsel of record via the Court's CM/ECF Notification System, this 30th day of July 2019:

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/s/ Gerald J. Stubenhofer